

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

STEPHANIE MOYER as
ADMINISTRATOR OF THE ESTATE
OF VICTORIA JEANNETTE HERR

Plaintiff

v.

LEBANON COUNTY, et al.

Defendants

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3:16-CV-1424
(JUDGE MARIANI)

ORDER

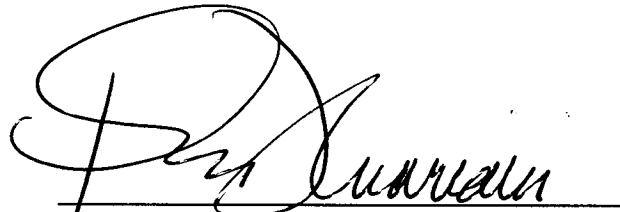
AND NOW, THIS 18th DAY OF JANUARY, 2018, upon review of Magistrate

Judge Mehalchick's Report and Recommendation ("R&R") (Doc. 75) for clear error or
manifest injustice, **IT IS HEREBY ORDERED THAT:**

1. The R&R (Doc. 75) is **ADOPTED** for the reasons stated therein.¹
2. The Lebanon County Defendants' Motion to Dismiss Plaintiff's Amended
Complaint (Doc. 48) is **DENIED**.

¹ Despite the adoption of the R&R, this Court is not convinced that the Amended Complaint is any less conclusory than the original Complaint. This is particularly true as it relates to the allegation that, as characterized by the Magistrate Judge, "Gerstner knew that Herr would not receive critical attention" (Doc. 75, at 8 (citing Doc. 45, at ¶ 50 (stating that "Defendant Gerstner and all other LCCF personnel knew that Ms. Herr would not be provided adequate care and that LCCF's policies regarding the treatment of heroin withdrawal would not be followed."))). Further, with respect to the deliberate indifference claim, although the Magistrate Judge states that the standard for a claim for deliberate indifference is "lessened" from the standard under the Eighth Amendment in cases "falling under the Fourteenth Amendment for pretrial detainees such as Herr", it is important to note that the Supreme Court has held that the due process rights of pretrial detainees "are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (emphasis added). Finally, with respect to the claim of Intentional Infliction of Emotional Distress, the Court will defer its serious concerns as to the validity of this cause of action under applicable law until the completion of discovery.

3. The above-captioned action is **REMANDED** to Magistrate Judge Mehalchick for proceedings consistent with this Order.



Robert D. Mariani
United States District Judge